

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10284 OF 2015

Sushila Andappa Soregaonkar] Petitioner

Versus

State of Maharashtra and others.] Respondents

Mr. Manoj Harit a/w Akhil Kurade i/b Manoj Harit & Co., for the Petitioner.

Mr. K.S. Thorat, A.G.P, for Respondents No.1 and 2.

Ms. Namrata Kadam i/b Mr. Vijay Killedar, for Respondent No.5.

CORAM: R.K. DESHPANDE &

PRITHVIRAJ K. CHAVAN, J.J.

DATE: 12th MARCH, 2020.

P.C:

Rule made returnable forthwith. Heard finally by consent of learned Counsel appearing for the parties.

2. Original petitioner-Andappa Lakappa Soregaonkar rendered 21 years, 8 months and 29 days continuous service as an 'Assistant Teacher' in the School of respondent No.6 i.e in D.H. Khajindar School during 1st August, 1951 to 30th April, 1973.

Thereafter, he continuously remained absent for about 18 years from 1st May, 1973 to 9th August, 1991 till he attained the age of superannuation.

3. The petitioner was denied pension on the basis of Rule-47 (1) (a) of the Maharashtra Civil Services Pension Rules, 1982 dealing with the effect of interruption in service entailing the forfeiture of past service. One of the exceptions to it is in clause (a) or authorized leave of absence. If the employee is on authorized leave of absence, the forfeiture shall not be attracted. The Petitioner, according to the respondents, was unauthorizedly absent for 18 years and hence the service is forfeited. Therefore, the petitioner is before this Court in this Writ Petition challenging the action of denial of pension by the impugned order dated 4th August, 2015 passed by respondent No.5.

4. We have also gone through the order dated 26th September, 2014 passed by the State Government who rejected the claim on the basis of Rule-16 (3) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and Rule-47 (1) (a) of the Maharashtra Civil Services Pension Rules, 1982.

5. Undisputedly, the petitioner is qualified to get pension as he has rendered 21 years, 8 months and 29 days continuous service. The pension cannot, therefore, be denied to him without any justification. Reliance is placed upon Rule-47 (1) (a) by the learned Counsel appearing for respondents No.1 and 2 and the provisions of sub rule (2) of Rule-47 by the learned Counsel appearing for the petitioner. Hence, the said provision is reproduced below:

“47. Effect of Interruption in service._(1) An interruption in the service of a Government servant entails forfeiture of his past service except in the following cases:-

- (a) authorised leave of absence;*
- (b)*
- (c)*
- (d)*
- (e)*

(2) Notwithstanding anything contained in sub-rule (1), the appointing authority may, by order, commute [retrospectively] the periods of absence without leave as extraordinary leave”.

6. Un-disputedly, the petitioner remained unauthorizedly absent from service continuously for a period about 18 years i.e from 1st May, 1973 to 9th August, 1991. However, that by itself is not enough to deprive him of the pension, unless the period of

absence without leave is not or cannot be treated as an extraordinary leave by the Appointing Authority in terms of sub rule (2) of Rule-47.

7. Our attention is invited to the letter of Education Officer (Primary) Zilla Parishad, Solapur written on 19th December, 2006 to the Deputy Director Education, Pune informing that as per the Resolution No.02 of 10th November, 1998 passed by the Management, the absence of the petitioner for a period of 18 years i.e from 1st May, 1973 to 9th August, 1991 has been treated as extraordinary leave. The proposal takes into consideration 21 years, 8 months and 29 days continuous service rendered by the petitioner. The proposal was, however, for release of compassionate pension under Rule-101 (1) of the Maharashtra Civil Services Pension Rules.

8. Perusal of the orders impugned in the Petition, more particularly, one dated 4th August, 2015 passed by the Education Department of the State Government shows that it ignored the proposal dated 19th December, 2006 treating the unauthorized period of absence of 18 years of the petitioner as an extraordinary leave. It is the decision of the Appointing

Authority, which is material. Once, the Appointing Authority treats this period as extraordinary leave, the other Authorities have to act on the basis of it.

9. Our attention is invited to Rule-16(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 by the learned Counsel appearing for respondents No.1 and 2 to oppose the claim for pension. The said provision is reproduced below:

“R.16. Leave:

3.In the case of a permanent employee who, without sufficient cause, fails to apply for leave within 7 days from the date of absence, it shall be treated as breach of discipline and he shall be liable for suitable disciplinary action after due inquiry. A permanent employee who is absent from duty [without leave continuously for a period of exceeding three years] or more, shall be deemed to have voluntarily abandoned his services”.

If a permanent employee fails to apply for leave within 7 days from the date of absence without sufficient cause then the absence is treated as breach of discipline and he is liable to face suitable disciplinary action after due inquiry. The Rule further states that a permanent employee who is absent from the duty without leave continuously for a period exceeding three years or

more, shall be deemed to have voluntarily abandoned his services.

10. We have not been pointed out any disciplinary action taken against the petitioner either by the Appointing Authority or by any Authority. We have also not been pointed out any order passed to treat that the petitioner has abandoned the service. Hence, the said rule cannot be relied upon to deny the pension for which the petitioner is found qualified and eligible.

11. During pendency of the Petition, the petitioner-expired on 23rd March, 2016 and the present petitioner Sushila is brought on record as a heir of the petitioner who claims to be widow of the deceased petitioner. Her entitlement needs to be decided. She has to establish her genuine and valid marriage with the original petitioner.

12. In view of above, this Writ Petition is partly allowed and following order is passed;

[1] Orders dated 4th August, 2015 and 26th September, 2014 are quashed and set aside.

- [2] Original petitioner- Andappa Lakappa Soregaonkar is held entitled to pensionary benefits.
- [3] However, genuineness of the claim of the present petitioner-Sushila will have to be examined by the Authorities concerned.
- [4] The respondents to find out as to whether the present petitioner is legally wedded wife of the deceased.
- [5] The claim be examined within a period of four months.
- [6] The petitioner shall be at liberty to produce the documents to satisfy the Authorities concerned.

13. Rule is made absolute in the aforesaid terms. No order as to costs.

[PRITHVIRAJ K. CHAVAN, J.]

[R. K. DESHPANDE, J.]